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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

<b>Emily Macut, a minor, by and through her</b>	)	<b>Case No.: 1:22-CV-00231-JLT-BAK</b>
<b>guardian ad litem, Sarah Mebane,</b>	)	
	)	<b>PLAINTIFFS' FIRST AMENDED</b>
	)	<b>COMPLAINT FOR DAMAGES FOR:</b>
<b>Plaintiff,</b>	)	
	)	<b>1. WRONGFUL DEATH [C.C.P.</b>
<b>vs.</b>	)	<b>§337.60, et. seq.]</b>
	)	
	)	<b>2. SURVIVAL / NEGLIGENCE</b>
	)	<b>[C.C.P. §377.30, et. seq.];</b>
<b>WABASH NATIONAL CORPORATION;</b>	)	
<b>MP TRANS INC.; WILLIE BOYD; PHILIP</b>	)	<b>3. STRICT LIABILITY;</b>
<b>PORTWOOD FAMILY TRUST; and DOES)</b>	)	
<b>1 through 100, Inclusive,</b>	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
	)	
<b>Defendants.</b>	)	
	)	
	)	
	)	

**FOR CAUSES OF ACTION AGAINST DEFENDANTS, AND EACH OF THEM,**  
**PLAINTIFF, EMILY MACUT, a minor, by and through her guardian ad litem, Sarah**  
**Mebane, DOES HEREBY COMPLAIN AND ALLEGE AS FOLLOWS:**

**THE PARTIES**

1. Decedent JOSHUA MACUT (hereinafter "DECEDENT," unless provided otherwise) is, and at all times mentioned was, a resident of the County of Kern, State of California.

2. DECEDENT died as a result of the wreck/vehicle collision on June 7, 2021, and is survived by his biological child, EMILY MACUT, a minor by and through her guardian ad litem, SARAH MEBANE, and as heir at law and successor in interest to JOSHUA MACUT.

3. Plaintiff EMILY MACUT is one of the "surviving", natural "children" and "issue" of Decedent JOSHUA MACUT and an heir-at-law of Decedent JOSHUA MACUT pursuant to California Code of Civil Procedure Section 377.60(a) and California Probate Code Section 6402(a) and has standing to maintain a cause of action for the Wrongful Death of her father, Decedent JOSHUA MACUT. Plaintiff EMILY MACUT is also a "successor in interest" and "beneficiary" of her father Decedent JOSHUA MACUT'S estate pursuant to California Code of Civil Procedure Sections 377.30 and 377.11 as Plaintiff EMILY MACUT "succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action."

4. Plaintiff EMILY MACUT, a minor by and through her guardian ad litem, SARAH MEBANE, is the only "successor in interest" and "beneficiary" of her father Decedent JOSHUA MACUT'S estate, who is qualified to "commence an action or proceeding as the decedent's successor in interest." Plaintiff EMILY MACUT has standing to pursue a cause of action for "Wrongful Death" for "the death of a person (her father, Decedent JOSHUA MACUT) caused by the wrongful act or neglect of another" under California Code of Civil Procedure Sections 377.60. Plaintiff EMILY MACUT also has standing to pursue causes of action for "Personal Injury/Survival" "that survive the death of the person (Decedent JOSHUA MACUT)" and "pass to the decedent's successor in interest (Plaintiff EMILY MACUT)" under California Code of Civil Procedure Sections 377.60.

5. Plaintiff EMILY MACUT is, and at all times mentioned was, a resident of the County of Kern, State of California, and brings this claim by and through her guardian SARAH MEBANE, for the injuries sustained.

6. Defendant WABASH NATIONAL CORPORATION (hereinafter "WABASH," unless provided otherwise) is, and at all times mentioned was, a corporation incorporated under the laws of the State of Delaware.

1           7.       Plaintiff is informed and believes, and based thereupon alleges, that Defendant  
2 WABASH, at the time of filing the initial complaint in this matter, had its principal place of  
3 business in the State of California, and is authorized to do business and doing business in  
4 California.

5           8.       Plaintiff is informed and believes, and based thereupon alleges, that Defendant  
6 WABASH will claim that its principal place of business/ “nerve center” is located in the State of  
7 Indiana, however, the corporation’s board and high-level officers direct, control, and coordinate  
8 Defendant WABASH’s activities remotely. Plaintiff is informed and believes, and based  
9 thereupon alleges, that Defendant WABASH’S business activities are directed, (including  
10 product development, exporting, marketing, production, research, service, etc.) in the State of  
11 California.

12           9.       Defendant MP TRANS INC. (hereinafter “MP TRANS,” unless provided  
13 otherwise) is, and at all times mentioned was, an Indiana corporation authorized to do business in  
14 California. Based on information and belief, Defendant MP TRANS owned the Freightliner and  
15 Wabash Duraplate Semi Trailer (Indiana License Plate Nos. 3014954 and SP956HLW,  
16 respectively) that was being driven by Defendant BOYD at the time of the June 7, 2021 wreck /  
17 vehicle collision.

18           10.      Defendant WILLIE BOYD (hereinafter “BOYD,” unless provided otherwise) is,  
19 and at all times mentioned was, unable to be located by the Plaintiff. Defendant BOYD was, at  
20 all times herein mentioned, including at the time of the wreck / vehicle collision acting in the  
21 course and scope of his employment and agency with Defendant MP TRANS INC. and DOES 1-  
22 50.

23           11.      Defendant WILLIE BOYD (hereinafter “BOYD,” unless provided otherwise) has  
24 a warrant out for his arrest in Kern County, California, as of the date of the initial Complaint  
25 filing and this First Amended Complaint filing.

26           12.      At all times herein mentioned, Defendant MP TRANS INC. and DOES 1-50  
27 employed Defendant WILLIE BOYD and Defendant WILLIE BOYD was in the course and  
28

1 scope of his employment and was an agent of Defendant WILLIE BOYD and DOES 1-50 at  
2 time the time of the wreck / vehicle collision.

3 13. Defendant PORTWOOD FAMILY TRUST (hereinafter "PORTWOOD," unless  
4 provided otherwise) is, and at all times mentioned was, a California Trust.

5 14. Plaintiff is informed and believes, and based thereupon, that Defendant  
6 PORTWOOD, is a California Trust that is comprised of, at a minimum, the individuals Philip  
7 Portwood and Sue Portwood, as trustees, who are residents of the County of Kern, State of  
8 California.

9 15. Defendant PORTWOOD FAMILY TRUST owns the real property identified by  
10 the APN 071-180-21, commonly addressed as 17081 Magnolia Ave., Wasco, California, 93280,  
11 which is at the intersection of Magnolia Avenue and Merced Avenue in Wasco, California.

12 16. The fictitiously named defendants named herein as DOES 1 through 100 are sued  
13 pursuant to the provisions of Section 474 of the Code of Civil Procedure. Plaintiffs are informed  
14 and believe, and upon the basis of such information and belief allege, that each fictitious  
15 defendant was in some way responsible for, participated in or contributed to the matters and  
16 things of which Plaintiffs complain herein, and in some fashion have legal responsibility  
17 therefor. When the exact nature and identity of such fictitious defendants' responsibility for,  
18 participation in and contribution to the matters and things herein alleged are ascertained by  
19 plaintiffs, Plaintiffs will seek leave to amend this Complaint and all proceedings herein to set  
20 forth the same.

21 **JURISDICTION AND VENUE**

22 17. This cause of action arises out of events which occurred at the intersection of  
23 Magnolia Avenue and Merced Avenue in the City of Shafter, County of Kern, State of  
24 California, on June 7, 2021, between parties which do not have complete diversity of citizenship.

25 18. The original Complaint, filed on February 8, 2022 in the Kern County Superior  
26 Court and this First Amended Complaint, do not contain any causes of action arising under any  
27 federal statute; further, each and every cause of action stated by Plaintiff is a state law claim.  
28

1           19. Plaintiff MACUT is, and at all times mentioned was, a resident of the County of  
2 Kern, State of California, while Defendant PORTWOOD FAMILY TRUST is, and at all times  
3 mentioned was, a California trust, with its trustees and beneficiaries in the County of Kern,  
4 California.

5           20. Plaintiff is informed and believes, and based thereupon alleges, that Defendant  
6 WABASH, at the time of filing the initial complaint in this matter, had its principal place of  
7 business in the State of California

8           21. The subject accident occurred in the Superior Court of the County of Kern's  
9 jurisdiction and a substantial part of the events or omissions giving rise to the claims occurred in  
10 the County of Kern, State of California.

11           **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

12           22. This is an action by Plaintiff for wrongful death, personal injuries/survival and  
13 products liability arising out of a wreck / vehicle collision, which occurred on June 7, 2021 at the  
14 intersection of Magnolia Avenue and Merced Avenue, in the City of Shafter, County of Kern,  
15 State of California.

16           23. DECEDENT was the driver in the 2015 Toyota Tacoma bearing California  
17 License Plate No. 80315U1.

18           24. At all times herein mentioned, Defendant PORTWOOD was the legal owner of  
19 the real property identified by the APN 071-180-21, commonly addressed as 17081 Magnolia  
20 Ave., Wasco, California, 93280, which is at the intersection of Magnolia Avenue and Merced  
21 Avenue in Wasco, California. Defendant PORTWOOD owned, leased, occupied, and/or  
22 controlled the real property identified by the APN 071-180-21, commonly addressed as 17081  
23 Magnolia Ave., Wasco, California, 93280.

24           25. At all times herein mentioned, defendant BOYD was operating the Freightliner  
25 and Wabash Duraplate Semi Trailer (Indiana License Plate Nos. 3014954 and SP956HLW,  
26 respectively), which is owned by Defendant MP TRANS INC.

1           26.     On June 7, 2021, based on information and belief, DECEDENT was traveling  
2 eastbound on Merced Avenue on a dry roadway, while the weather was clear and warm at  
3 approximately 1200 hours.

4           27.     Defendant BOYD was traveling southbound on Magnolia Avenue.

5           28.     On June 7, 2021, and at all times relevant, there was a stop sign at the intersection  
6 of Magnolia Avenue and Merced Avenue for all vehicles traveling northbound or southbound on  
7 Magnolia Avenue.

8           29.     On June 7, 2021, and at all times relevant, there were no traffic signs or traffic  
9 markers for vehicles proceeding eastbound or westbound on Merced Avenue.

10          30.     On June 7, 2021, and at all times relevant, all vehicles traveling on Magnolia  
11 Avenue must necessarily yield to all vehicles traveling on Merced Avenue.

12          31.     California Vehicle Code Section 21802(a) states the following: "The driver of any  
13 vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop as required  
14 by Section 22450. The driver shall then yield the right-of-way to any vehicles which have  
15 approached from another highway, or which are approaching so closely as to constitute an  
16 immediate hazard, and shall continue to yield the right-of-way to those vehicles until he or she  
17 can proceed with reasonable safety."

18          32.     On June 7, 2021, Defendant BOYD progressed through the intersection on  
19 Mongolia Avenue, failing to yield to DECEDENT, traveling on Merced Avenue.

20          33.     On June 7, 2021, Defendant BOYD relayed to California investigators that he was  
21 unable to see west of Magnolia Avenue, onto Merced Avenue, due to the orchard.

22          34.     The vegetation/ cultivation of the real property identified by the APN 071-180-21,  
23 commonly addressed as 17081 Magnolia Ave., Wasco, California, 93280, owned and controlled  
24 by Defendant PORTWOOD impeded Defendant BOYD'S ability to see all approaching vehicles  
25 travelling on Merced Avenue.

26          35.     Kern County Ordinance No. G-8697, § 6, 4-4-17 states: "Every owner, manager  
27 and person in possession, charge or control of any property shall keep it free and clear of all  
28 accumulations of weeds or other hazardous growths which may attract, harbor or provide a

1 breeding place for insects or rodents, create a fire hazard or otherwise be or become a hazard to  
2 health, safety and welfare of the public. Any property or premises not kept free of such  
3 accumulations is a public nuisance and may be abated as provided in this chapter.”

4 36. Defendant PORTWOOD did not maintain their real property’s tree branches and  
5 vegetation to provide a clear view of approaching vehicles on Merced Avenue in violation of  
6 Kern County Ordinance No. G-8697, § 6, 4-4-17. Defendant PORTWOOD did not keep its  
7 property clear of tree growth which created a hazard to the health, safety, and/or welfare of the  
8 public traveling at or near the intersection of Magnolia Avenue and Merced Avenue in Kern  
9 County, California.

10 37. On impact, DECEDENT’S Tacoma crashed into the right side of Defendant MP  
11 TRANS’ Wabash Duraplate Semi Trailer that Defendant BOYD was driving. At impact, the  
12 right-side skirt of MP TRANS’ Wabash Duraplate Semi Trailer was crushed, dented, and bent,  
13 allowing DECEDENT’S Tacoma to go under the right side of the trailer, resulting in catastrophic  
14 damage to the passenger compartment of the 2015 Toyota Tacoma. As the direct and proximate  
15 result of the horrific crash, DECEDENT, JOSHUA MACUT, died.

16 38. Defendant MP TRANS’ Wabash Duraplate Semi Trailer was manufactured by  
17 Defendant WABASH and was a 2017 Dry Van Duraplate Model. Defendant WABASH’S 2017  
18 Dry Van Duraplate Model Semi Trailer had inadequate underride protection on the sides of the  
19 trailer, as neither side had an underride protection guard.

20 39. The height of the right and left side Defendant WABASH’S 2017 Dry Van  
21 Duraplate Model Semi Trailer proximately caused DECEDENT’S Tacoma to underride the  
22 trailer.

23 40. When a lower profile passenger vehicle physically does travel underneath the  
24 higher profile commercial motor vehicle, the first point of impact is often beyond the hood and  
25 into the glass windshield. The second point of impact then becomes the head, face, neck, spine,  
26 and chest of the lower profile vehicle’s occupant.

27 41. According to its 10-K SEC filing for the Fiscal Year Ending December 31, 2021,  
28 Defendant WABASH'S core customer base is made up of the nation's largest truckload common

1 carriers, leasing companies, private fleet carriers, less-than-truckload common carriers and  
2 package carriers. Further, the SEC filing states Defendant WABASH is the leading provider of  
3 trailers to a significant number of top tier trucking companies, generating a revenue base that has  
4 helped to sustain Defendant WABASH as one of the market leaders.

5 42. According to its 10-K SEC filing, Defendant WABASH is a manufacturer of  
6 goods widely used in commerce and is thereby subject to product liability claims. Defendant  
7 WABASH seeks to serve the entire U.S. trucking and transportation market through the  
8 production of its semi-trailers. Defendant WABASH maintains at least one facility in California.

9 43. Defendant WABASH is engaged in the business of designing, manufacturing and  
10 marketing semi-trailers. Defendant WABASH holds three patents, issued in April 2012,  
11 February 2020, and March 2021 for side underride guards. At the 2017 North American  
12 Commercial Vehicle Show Defendant WABASH showed off a 53-ft Duraplate HD trailer with a  
13 prototype side impact guard designated as a Side Underride Guard with Aero Skirt. Defendant  
14 WABASH boasted that the combination side impact guard and skirt prototype passed tests for a  
15 90-degree centerline vehicle impact at 35 miles per hour.

16 44. In Defendant WABASH'S 2012 and 2020 Patent Application, Defendant  
17 WABASH claims: "Truck trailers typically have a higher elevation than passenger vehicles. This  
18 presents a risk that a passenger vehicle will underride the trailer in an accident, potentially  
19 resulting in damage to the underriding vehicle and injury to occupants therein. Accordingly,  
20 some trailers may include a side protection device, or underride guard, to reduce the risk of such  
21 passenger vehicles underriding the trailer. The side protection device is intended to reduce the  
22 extent to which a "passenger vehicle" (as defined in 49 C.F.R. Part 571S) can intrude under the  
23 side of a trailer, diminishing passenger compartment intrusion."

24 45. Defendant WABASH is in the business of designing, testing, manufacturing,  
25 distributing and selling trailers, including the semi-trailer involved in the motor vehicle collision  
26 that resulted in the death of DECEDENT, JOSHUA MACUT. Defendant WABASH, through its  
27 actions and those of its affiliated/parent/subsidiary companies and agents, conducts substantial  
28 business in California, in that it causes its products to be marketed, distributed, sold and used



1 within the State of California. As such, Defendant WABASH derives significant revenue from  
2 its activities and the sale/use of its products in the State of California. Through its actions,  
3 Defendant Wabash has consented to the jurisdiction of this Court and reasonably anticipates  
4 being sued in California courts.

5 46. Plaintiff is informed, believes and alleges thereon that, at all times mentioned  
6 herein, each fictitiously named DOE Defendant is responsible in some manner or capacity for the  
7 occurrences herein alleged, and that Plaintiff's damages, as herein alleged, were proximately  
8 caused by said DOE Defendants.

9 47. Plaintiffs are informed and believe, and thereon allege, that on June 7, 2021,  
10 Defendants BOYD, MP TRANS, and DOES 1-100 and each of them, owned, operated, loaded,  
11 drove, leased, manufactured, controlled, maintained, dispatched or were otherwise responsible  
12 for the Freightliner and Wabash Duraplate Semi Trailer (Indiana License Plate Nos. 3014954 and  
13 SP956HLW, respectively). Plaintiffs are further informed and believe, and thereon allege, that  
14 defendants, and each of them, in doing and in failing to do the things alleged in this Complaint,  
15 were, at all times herein mentioned, the agents or employees of each other and were, at all times  
16 herein mentioned, acting within the time, purpose and scope of said agency and that defendants,  
17 and each of them, ratified the acts of each other.

18 48. On June 7, 2021, Defendants BOYD, WABASH, MP TRANS, and DOES 1-100  
19 were negligent in the driving, operation, ownership, maintenance and control of the Freightliner  
20 and Wabash Duraplate Semi Trailer. Defendant BOYD negligently failed to yield to  
21 DECEDENT when Defendant BOYD proceeded into the intersection in violation of Vehicle  
22 Code Sections 21802(a).

23 49. The Subject Wabash Duraplate Semi Trailer was not equipped with any shield,  
24 guard, or other device, to prevent vehicles, such as DECEDENT'S from under-riding the side of  
25 the Subject Wabash Duraplate Semi Trailer. The Subject Wabash Duraplate Semi Trailer failed  
26 to clear the intersection and DECEDENT'S vehicle collided with and under-rode the side of the  
27 Subject Semi-Trailer.

1           50.     The negligent actions and inactions of BOYD, and the other defendants,  
2 proximately caused a collision to occur between the vehicle and caused a fatality to  
3 DECEDENT.

4           51.     As a direct and proximate result of said tortuous acts, omissions, negligence, or  
5 conduct of Defendants BOYD, MP TRANS, WABASH, PORTWOOD, and DOES 1-100,  
6 DECEDENT JOSHUA BOYD suffered severe injuries which ultimately caused his death after  
7 conscious physical pain and emotional suffering.

8                                   **FIRST CAUSE OF ACTION**  
9           **(FOR WRONGFUL DEATH (C.C.P. SECTION 377.60, ET. SEQ.) BY PLAINTIFF**  
10                                   **AGAINST ALL DEFENDANTS)**

11           52.     Plaintiff hereby re-alleges and incorporates the foregoing paragraphs hereinabove  
12 as though fully set forth herein.

13           53.     Pursuant to California Code of Civil Procedure Section 377.60 "Wrongful death,"  
14 a DECEDENT'S surviving children can maintain "a cause of action for the death of a person  
15 caused by the wrongful act or neglect of another." Plaintiff EMILY MACUT, a minor by and  
16 through her guardian ad litem, SARAH MEBANE, is the surviving child of DECEDENT and  
17 has standing to bring this action for the Wrongful Death of her father, DECEDENT, under  
18 California Code of Civil Procedure Section 377.60(a) and California Probate Code Section  
19 6402(a) and as also hereinabove alleged.

20           54.     This cause of action for Wrongful Death under California Code of Civil  
21 Procedure Section 377.60 is based on Negligence including the Negligence theories of Motor  
22 Vehicle Negligence (negligent operation of a vehicle in the course and scope of employment);  
23 Negligence Per Se; Negligent Entrustment; and General Negligence.

24           55.     On or about June 7, 2021, traveling at or near the intersection of Magnolia  
25 Avenue and Merced Avenue in Kern County, California and at all times herein mentioned,  
26 Defendants BOYD, MP TRANS and DOES 1-100, inclusive, had a duty of due care to own,  
27 maintain, operate and drive Defendants' Freightliner and Wabash Duraplate Semi Trailer in a  
28

1 reasonable and careful manner, in accordance with the speed limit and under such control that it  
2 would not strike other vehicles, including the Tacoma being driven by DECEDENT.

3 56. In the ordinary course of business, the Subject Wabash Duraplate Semi Trailer  
4 was designed, manufactured, assembled, tested, marketed, distributed, sold, and/or placed into  
5 the stream of commerce such that it reached the State of California by the acts of Defendant  
6 WABASH. The intended purpose of the Subject Wabash Duraplate Semi Trailer was and is to  
7 transport good across the United States highway system, including highways and streets in the  
8 State of California. At the time of the crash, the Subject Wabash Duraplate Semi Trailer was  
9 used in a manner reasonably anticipated by Defendant WABASH.

10 57. On or about June 7, 2021, traveling at or near the intersection of Magnolia  
11 Avenue and Merced Avenue in Kern County, California and at all times herein mentioned,  
12 Defendants BOYD, MP TRANS and DOES 1-100, inclusive, breached their duty of due care  
13 when they negligently owned, maintained, operated and drove Defendants' Freightliner and  
14 Wabash Duraplate Semi Trailer, failing to yield the right-of-way to any vehicles which constitute  
15 an immediate hazard and proceeding with inattention to traffic conditions and negligently out of  
16 control such that Defendants' Wabash Duraplate Semi Trailer impeded and was under-rode by  
17 the right-of-way Tacoma DECEDENT was driving.

18 58. At the time of the Subject crash, the Subject Wabash Duraplate Semi Trailer was  
19 without substantial change in the condition in which it was designed, manufactured, tested,  
20 inspected, assembled, distributed, sold and/or placed into the stream of commerce by Defendant  
21 WABASH. At the time of the Subject crash, the Subject Wabash Duraplate Semi Trailer was in  
22 substantially the same condition as when it left the control of Defendant WABASH, except for  
23 reasonably anticipated wear and tear.

24 59. Defendant WABASH owed a duty to the general motoring public, including  
25 DECEDENT JOSHUA MACUT, to design, manufacture, assemble test, market, and/or  
26 distribute the Subject Wabash Duraplate Semi Trailer such that it was reasonably safe for  
27 intended and/or foreseeable operation.  
28

1           60. Defendant WABASH knew that the Subject Wabash Duraplate Semi Trailer  
2 would be used without inspection for defective or unreasonably dangerous conditions and  
3 represented that the Subject Wabash Duraplate Semi Trailer could be safely used and would be  
4 fit for the ordinary purposes for which it was intended. At the time the Subject Wabash  
5 Duraplate Semi Trailer was designed, manufactured, assembled, tested, marketed, distributed,  
6 sold, and/or placed into the stream of commerce, it was foreseeable to Defendant WABASH that  
7 vehicles would under-ride semi-trailers in motor vehicle collisions.

8           61. At the time the Subject Wabash Duraplate Semi Trailer was designed,  
9 manufactured, assembled, tested, marketed, distributed, sold and/or placed into the stream of  
10 commerce by Defendant WABASH, Defendant WABASH knew or should have known that  
11 occupants of a vehicle that under-rode a semi-trailer, such as the Subject Wabash Duraplate Semi  
12 Trailer, were subject to a heightened risk of injury or death. As part of its design and  
13 manufacture, and prior to placing it into the stream of commerce, Defendant WABASH  
14 equipped semi-trailers, including the Subject Semi-Trailer, with rear under-ride guards.  
15 Notwithstanding the aforesaid duty, Defendant WABASH failed to exercise reasonable care and  
16 caution with respect to the Subject Wabash Duraplate Semi Trailer, in that it failed to equip the  
17 Subject Semi-Trailer with any shield, guard or other device to prevent vehicles from under-riding  
18 the side of the Subject Wabash Duraplate Semi Trailer.

19           62. On or about June 7, 2021, traveling at or near the intersection of Magnolia  
20 Avenue and Merced Avenue in Kern County, California and at all times herein mentioned,  
21 Defendants BOYD, MP TRANS and DOES 1-100, inclusive, violated Vehicle Code Section  
22 21802 and other provisions of the California Vehicle Code, The California Commercial Drivers  
23 Handbook and the California Drivers Handbook. The negligent actions and inactions and  
24 failures to act reasonably and prudently in the operation / driving, maintenance and control of the  
25 Freightliner and Wabash Duraplate Semi Trailer by Defendants BOYD, MP TRANS and DOES  
26 1-100 caused the Subject Semi-Trailer to fail to clear the intersection and DECEDENT'S vehicle  
27 to collide with the side of the Subject Semi-Trailer.  
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63. On or about June 7, 2021, Defendants WABASH, MP TRANS and DOES 1-100, inclusive, negligently entrusted the Defendants' Freightliner and Wabash Duraplate Semi Trailer to Defendant BOYD.

64. On or about June 7, 2021, Defendants WABASH, MP TRANS and DOES 1-100, inclusive, negligently hired, trained and supervised their employee and agent Defendant BOYD such that Defendant BOYD, who was improperly trained and who was improperly supervised, operated the Defendants' Freightliner and Wabash Duraplate Semi Trailer in a negligent manner. Defendants' negligent training and supervision of Defendant BOYD resulted in Defendant BOYD driving in a negligent manner and proximately caused Defendants' Freightliner and Wabash Duraplate Semi Trailer to impede DECEDENT'S Tacoma.

65. The vegetation/ cultivation of the real property identified by the APN 071-180-21, commonly addressed as 17081 Magnolia Ave., Wasco, California, 93280, owned and controlled by Defendant PORTWOOD impeded Defendant BOYD'S ability to see all approaching vehicles travelling on Merced Avenue. Defendant PORTWOOD did not maintain their real property's tree branches and vegetation to provide a clear view of approaching vehicles on Merced Avenue in violation of Kern County Ordinance No. G-8697, § 6, 4-4-17. Defendant PORTWOOD did not keep its property clear of tree growth which created a hazard to the health, safety, and/or welfare of the public traveling at or near the intersection of Magnolia Avenue and Merced Avenue in Kern County, California.

66. Defendant PORTWOOD had a duty to those travelling at or near their property, particularly where there is the foreseeability of harm or peril, where public roadways and views are obstructed by the vegetation maintained/controlled/owned by Defendant PORTWOOD.

67. As a direct and proximate result of said tortious acts, omissions, negligence, or conduct of Defendants, and each of them, DECEDENT JOSHUA MACUT'S Tacoma collided with the Defendants' Wabash Duraplate Semi Trailer, and DECEDENT'S Tacoma under-rode Defendants' Semi-Trailer. As a direct and proximate result of the actions of Defendants BOYD, MP TRANS, WABASH, PORTWOOD, and DOES 1-100, DECEDENT died after colliding with the Subject Semi-Trailer. EMILY MACUT, a minor by and through her guardian ad litem,

SARAH MEBANE, as heir-at-law of DECEDENT has sustained and incurred, and is certain in the future to sustain and incur losses, injuries, and damages for wrongful death under C.C.P. Section 377.60, et seq., which are itemized as follows:

(a) Funeral and burial expenses in a sum to be determined according to proof.

Plaintiff will request leave of Court to determine the total amount thereof, once the same has been ascertained;

(b) The value of DECEDENT's financial support to be determined according to proof; and

(c) Plaintiff has been deprived of the services, love, society, care, comfort, protection, guidance, companionship and affection of DECEDENT, he having been a loving and devoted father to PLAINTIFF.

## **SECOND CAUSE OF ACTION**

### **(FOR SURVIVAL / NEGLIGENCE (C.C.P. SECTION 377.30, ET. SEQ.) BY PLAINTIFF AS SUCCESSOR IN INTEREST TO HER FATHER DECEDENT JOSHUA MACUT AGAINST ALL DEFENDANTS)**

68. Plaintiff hereby re-alleges and incorporates the foregoing paragraphs hereinabove as though fully set forth herein.

69. Pursuant to California Code of Civil Procedure Section 377.30 "Decedent's Cause of Action," "a cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest... and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." Plaintiff EMILY MACUT, a minor by and through her guardian ad litem, SARAH MEBANE, is the successor-in-interest to the Estate of Joshua Macut and to Decedent JOSHUA MACUT pursuant to C.C.P. Section 377.30 and as also hereinabove alleged. Plaintiff may commence and maintain causes of action that survive Decedent JOSHUA MACUT'S death. This Survival cause of action is based on Negligence including the Negligence theories of Motor Vehicle Negligence (negligent operation of a vehicle in the course and scope of employment); Negligence Per Se; Negligent Entrustment; and General Negligence.

1           70. On or about June 7, 2021, at or near the intersection of Magnolia Avenue and  
2 Merced Avenue in Kern County, California, and at all times herein mentioned, Defendants  
3 BOYD, MP TRANS and DOES 1-100, inclusive, had a duty of due care to own, maintain,  
4 operate and drive Defendants' Freightliner and Wabash Duraplate Semi Trailer in a reasonable  
5 and careful manner, in accordance with the speed limit and under such control that it would not  
6 strike other vehicles, including the Tacoma being driven by DECEDENT.

7           71. In the ordinary course of business, the Subject Wabash Duraplate Semi Trailer  
8 was designed, manufactured, assembled, tested, marketed, distributed, sold, and/or placed into  
9 the stream of commerce such that it reached the State of California by the acts of Defendant  
10 WABASH. The intended purpose of the Subject Wabash Duraplate Semi Trailer was and is to  
11 transport good across the United States highway system, including highways and streets in the  
12 State of California. At the time of the crash, the Subject Wabash Duraplate Semi Trailer was  
13 used in a manner reasonably anticipated by Defendant WABASH.

14           72. On or about June 7, 2021, at or near the intersection of Magnolia Avenue and  
15 Merced Avenue in Kern County, California , and at all times herein mentioned, Defendants  
16 BOYD, MP TRANS and DOES 1-100, inclusive, breached their duty of due care when they  
17 negligently owned, maintained, operated and drove Defendants' Freightliner and Wabash  
18 Duraplate Semi Trailer, failing to yield the right-of-way to any vehicles which constitute an  
19 immediate hazard and proceeding with inattention to traffic conditions and negligently out of  
20 control such that Defendants' Wabash Duraplate Semi Trailer was under rode by the Tacoma  
21 DECEDENT was driving.

22           73. At the time of the Subject crash, the Subject Wabash Duraplate Semi Trailer was  
23 without substantial change in the condition in which it was designed, manufactured, tested,  
24 inspected, assembled, distributed, sold and/or placed into the stream of commerce by Defendant  
25 WABASH. At the time of the Subject crash, the Subject Wabash Duraplate Semi Trailer was in  
26 substantially the same condition as when it left the control of Defendant WABASH, except for  
27 reasonably anticipated wear and tear.  
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1           74. Defendant WABASH owed a duty to the general motoring public, including  
2 DECEDENT JOSHUA MACUT, to design, manufacture, assemble test, market, and/or  
3 distribute the Subject Wabash Duraplate Semi Trailer such that it was reasonably safe for  
4 intended and/or foreseeable operation.

5           75. Defendant WABASH knew that the Subject Wabash Duraplate Semi Trailer  
6 would be used without inspection for defective or unreasonably dangerous conditions and  
7 represented that the Subject Wabash Duraplate Semi Trailer could be safely used and would be  
8 fit for the ordinary purposes for which it was intended. At the time the Subject Wabash  
9 Duraplate Semi Trailer was designed, manufactured, assembled, tested, marketed, distributed,  
10 sold, and/or placed into the stream of commerce, it was foreseeable to Defendant WABASH that  
11 vehicles would under-ride semi-trailers in motor vehicle collisions.

12           76. At the time the Subject Wabash Duraplate Semi Trailer was designed,  
13 manufactured, assembled, tested, marketed, distributed, sold and/or placed into the stream of  
14 commerce by Defendant WABASH, Defendant WABASH knew or should have known that  
15 occupants of a vehicle that under-rode a semi-trailer, such as the Subject Wabash Duraplate Semi  
16 Trailer, were subject to a heightened risk of injury or death. As part of its design and  
17 manufacture, and prior to placing it into the stream of commerce, Defendant WABASH  
18 equipped semi-trailers, including the Subject Semi-Trailer, with rear under-ride guards.  
19 Notwithstanding the aforesaid duty, Defendant WABASH failed to exercise reasonable care and  
20 caution with respect to the Subject Wabash Duraplate Semi Trailer, in that it failed to equip the  
21 Subject Semi-Trailer with any shield, guard or other device to prevent vehicles from under-riding  
22 the side of the Subject Wabash Duraplate Semi Trailer.

23           77. On or about June 7, 2021, traveling at or near the intersection of Magnolia  
24 Avenue and Merced Avenue in Kern County, California and at all times herein mentioned,  
25 Defendants BOYD, MP TRANS and DOES 1-100, inclusive, violated Vehicle Code Section  
26 21802 and other provisions of the California Vehicle Code, The California Commercial Drivers  
27 Handbook and the California Drivers Handbook. The negligent actions and inactions and  
28 failures to act reasonably and prudently in the operation / driving, maintenance and control of the



1 Freightliner and Wabash Duraplate Semi Trailer by Defendants BOYD, MP TRANS and DOES  
2 1-100 caused the Subject Semi-Trailer to fail to clear the intersection and DECEDENT'S vehicle  
3 to collide with the side of the Subject Semi-Trailer.

4 78. On or about June 7, 2021, Defendants WABASH, MP TRANS and DOES 1-100,  
5 inclusive, negligently entrusted the Defendants' Freightliner and Wabash Duraplate Semi Trailer  
6 to Defendant BOYD.

7 79. On or about June 7, 2021, Defendants WABASH, MP TRANS and DOES 1-100,  
8 inclusive, negligently hired, trained and supervised their employee and agent Defendant BOYD  
9 such that Defendant BOYD, who was improperly trained and who was improperly supervised,  
10 operated the Defendants' Freightliner and Wabash Duraplate Semi Trailer in a negligent manner.  
11 Defendants' negligent training and supervision of Defendant BOYD resulted in Defendant  
12 BOYD driving in a negligent manner and proximately caused Defendants' Freightliner and  
13 Wabash Duraplate Semi Trailer to impede DECEDENT'S Tacoma.

14 80. The vegetation/ cultivation of the real property identified by the APN 071-180-21,  
15 commonly addressed as 17081 Magnolia Ave., Wasco, California, 93280, owned and controlled  
16 by Defendant PORTWOOD impeded Defendant BOYD'S ability to see all approaching vehicles  
17 travelling on Merced Avenue. Defendant PORTWOOD did not maintain their real property's  
18 tree branches and vegetation to provide a clear view of approaching vehicles on Merced Avenue  
19 in violation of Kern County Ordinance No. G-8697, § 6, 4-4-17. Defendant PORTWOOD did  
20 not keep its property clear of tree growth which created a hazard to the health, safety, and/or  
21 welfare of the public traveling at or near the intersection of Magnolia Avenue and Merced  
22 Avenue in Kern County, California.

23 81. Defendant PORTWOOD had a duty to those travelling at or near their property,  
24 particularly where there is the foreseeability of harm or peril, where public roadways and views  
25 are obstructed by the vegetation maintained/controlled/owned by Defendant PORTWOOD.

26 82. As a direct and proximate result of said tortious acts, omissions, negligence, or  
27 conduct of Defendants, and each of them, DECEDENT JOSHUA MACUT'S Tacoma collided  
28 with the Defendants' Wabash Duraplate Semi Trailer, and DECEDENT'S Tacoma under-rode

1 Defendants' Semi-Trailer. As a direct and proximate result of the actions of Defendants BOYD,  
2 MP TRANS, WABASH, PORTWOOD, and DOES 1-100, DECEDENT died after colliding  
3 with the Subject Semi-Trailer.

4 83. As a direct and proximate result of said tortuous acts, omissions, negligence, or  
5 conduct of Defendants BOYD, MP TRANS, WABASH, PORTWOOD, and DOES 1-100,  
6 DECEDENT JOSHUA BOYD suffered severe injuries which ultimately caused his death after  
7 conscious physical pain and emotional suffering. As a direct and proximate result of the  
8 aforesaid wrongful acts and/ or omissions, and the resulting death of JOSHUA MACUT,  
9 Plaintiff, on behalf of her father, has sustained the following damages:

- 10 a) The pain and suffering experienced by JOSHUA MACUT between the time  
11 of injury and his death.

12  
13 **THIRD CAUSE OF ACTION**

14 **(STRICT LIABILITY BY PLAINTIFF AGAINST DEFENDANT WABASH AND DOES  
15 1-100, INCLUSIVE)**

16 84. Plaintiff hereby re-alleges and incorporates the foregoing paragraphs hereinabove  
17 as though fully set forth herein.

18 85. Pursuant to California Code of Civil Procedure Section 377.60 "Wrongful death,"  
19 a DECEDENT'S surviving children can maintain "a cause of action for the death of a person  
20 caused by the wrongful act or neglect of another." Plaintiff EMILY MACUT, a minor by and  
21 through her guardian ad litem, SARAH MEBANE, is the surviving child of DECEDENT and  
22 has standing to bring this action for the Wrongful Death of her father, DECEDENT, under  
23 California Code of Civil Procedure Section 377.60(a) and California Probate Code Section  
24 6402(a) and as also hereinabove alleged.

25 86. This cause of action for Wrongful Death under California Code of Civil  
26 Procedure Section 377.60 is based on Strict Liability.

27 87. Defendant WABASH and DOES 1-100, inclusive, owed a duty to the general  
28 motoring public, including DECEDENT JOSHUA MACUT, to design, manufacture, assemble

1 test, market, and/or distribute the Subject Wabash Duraplate Semi Trailer such that it was  
2 reasonably safe for intended and/or foreseeable operation.

3 88. Defendant WABASH and DOES 1-100, inclusive, knew that the Subject Wabash  
4 Duraplate Semi Trailer would be used without inspection for defective or unreasonably  
5 dangerous conditions and represented that the Subject Wabash Duraplate Semi Trailer could be  
6 safely used and would be fit for the ordinary purposes for which it was intended.

7 89. At the time the Subject Wabash Duraplate Semi Trailer was designed,  
8 manufactured, assembled, tested, marketed, distributed, sold, and/or placed into the stream of  
9 commerce, it was foreseeable to Defendant WABASH that vehicles would under-ride semi-  
10 trailers in motor vehicle collisions.

11 90. At the time the Subject Wabash Duraplate Semi Trailer was designed,  
12 manufactured, assembled, tested, marketed, distributed, sold and/or placed into the stream of  
13 commerce by Defendant WABASH, Defendant WABASH knew or should have known that  
14 occupants of a vehicle that under-rode a semi-trailer, such as the Subject Wabash Duraplate Semi  
15 Trailer, were subject to a heightened risk of injury or death.

16 91. As part of its design and manufacture, and prior to placing it into the stream of  
17 commerce, Defendant WABASH and DOES 1-100, inclusive, equipped semi-trailers, including  
18 the Subject Semi-Trailer, with rear under-ride guards.

19 92. Notwithstanding the aforesaid duty, Defendant WABASH and DOES 1-100,  
20 inclusive, failed to exercise reasonable care and caution with respect to the Subject Wabash  
21 Duraplate Semi Trailer, in that it failed to equip the Subject Semi-Trailer with any shield, guard  
22 or other device to prevent vehicles from under-riding the side of the Subject Wabash Duraplate  
23 Semi Trailer.

24 93. The Subject Wabash Duraplate Semi Trailer was not equipped with any shield,  
25 guard, or other device, to prevent vehicles, such as DECEDENT'S from under-riding the side of  
26 the Subject Wabash Duraplate Semi Trailer. The Subject Wabash Duraplate Semi Trailer failed  
27 to clear the intersection and DECEDENT'S vehicle collided with and under-rode the side of the  
28 Subject Semi-Trailer.

1           94.     The negligent actions and inactions of WABASH, and the other defendants,  
2 proximately caused a collision to occur between the vehicle and caused a fatality to  
3 DECEDENT.

4           95.     As a direct and proximate result of said tortuous acts, omissions, negligence, or  
5 conduct of Defendants WABASH, and DOES 1-100, DECEDENT JOSHUA BOYD suffered  
6 severe injuries which ultimately caused his death after conscious physical pain and emotional  
7 suffering.

8           96.     As a direct and proximate result of the aforesaid wrongful acts and/ or omissions,  
9 and the resulting death of JOSHUA MACUT, Plaintiff, on behalf of her father, has sustained the  
10 following damages:

- 11           a)           The pain and suffering experienced by JOSHUA MACUT between the  
12                         time of injury and his death.
- 13           b)           Funeral and burial expenses in a sum to be determined according to proof.  
14                         Plaintiff will request leave of Court to determine the total amount thereof,  
15                         once the same has been ascertained;
- 16           c)           The value of DECEDENT's financial support to be determined according  
17                         to proof; and
- 18           d)           Plaintiff has been deprived of the services, love, society, care, comfort,  
19                         protection, guidance, companionship and affection of DECEDENT, he  
20                         having been a loving and devoted father to PLAINTIFF.

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22 **WHEREFORE**, EMILY MACUT, a minor, by and through her Guardian Ad Litem, prays for  
23 judgment against Defendants, and each of them, as follows:

- 24           1.     For loss of financial support and contributions from the DECEDENT, in an  
25 amount to be shown according to proof at the time of trial;
- 26           2.     For all expenses incurred in the care, preparation, transportation and delivery of  
27 DECEDENT's body for funeral, and for funeral and burial expenses according to proof; and  
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1           3.       For general damages for loss of love, aid, comfort, care, society, devotion,  
2 services, protection, training, guidance, companionship, relationship and affection of  
3 DECEDENT JOSHUA MACUT, according to proof at the time of trial.

4           4.       For the pain and suffering experienced by JOSHUA MACUT between the time of  
5 injury and his death.

6           5.       For costs of suit incurred herein and prejudgment interest;

7           6.       For other such other and further relief as the court deems just and proper and

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9 DATED: March 14, 2022

**RODRIGUEZ & ASSOCIATES**

10  
11 By: /s/Victoria Harp

12 JOEL ANDREESSEN, ESQ.  
13 VICTORIA HARP, ESQ.  
14 Attorneys for Plaintiff  
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